

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **SEN. TRUDI SCHMIDT, Vice-Chairwoman** on March 11, 2005 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (D)
Sen. Bob Hawks (D)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Don Ryan (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Mike Cooney, Chairman (D)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 333, 3/2/2005; HB 452, 3/2/2005;
SB 207, 3/2/2005; SB 376, 3/2/2005

Executive Action:

HEARING ON SB 333**Opening Statement by Sponsor:**

SEN. FRANK SMITH (D), SD 16, Poplar, opened the hearing on **SB 333**, Revise laws relating to school retirement costs from certain federal funds. The bill rights a wrong that was done last session. He did not think the fiscal note was that bad, and there is a court order.

Proponents' Testimony:

Linda Brannan, Indian Impact Schools of Montana, testified this is the result of a piece of legislation that went through last session. The U.S. Department of Education said the state law violated the Impact Aid Law, and they just got the findings from the federal district court.

EXHIBIT (fcs54a01)

Ms. Brannon stated the bill is retroactive to July 1, 2004, since there was a violation of federal law. The fiscal note reflects the amount of dollars that the state would have had to put out last time.

Paul Huber, Superintendent, Wolf Point School District, spoke on behalf of **Dave Puyear, Montana Rural Education Association (MREA).** MREA supports **SEN. SMITH** and SB 333. This meant about \$180,000 to Wolf Point, and last year they had to cut four teachers.

Gwen Anderson, Browning Public Schools, stated the shift in funding cost Browning Public Schools \$375,000. Their general fund will not accommodate all of their salaries, so the remainder are paid with impact aid. This was a requirement to pay the retirement costs of those salaries out of impact aid as well, rather than the retirement fund. Last year, Browning Public Schools budgeted for these in the retirement fund because the issue was in flux. She suspected that Browning Public Schools was the most heavily impacted by this in the state of Montana.

Madalyn Quinlan, Office of Public Instruction (OPI), advised the U.S. Court has ruled on this. School districts that paid employees out of the federal impact aid fund can charge the retirement costs associated with those employees to the district retirement fund. The source of funding for the district retirement fund is a county levy matched by state guaranty tax base aid. There will be no fiscal impact from the court ruling for the current biennium. In FY 2005, they directed school

districts to charge expenditures for retirement for those employees to their retirement fund. If they get to the end of the year and are negative in that fund, after they have drawn down reserves, then they would be able to levy next year to restore the expenditures and reserves. The impact is \$650,000 in FY 06 and \$675,000 in FY 07.

Eric Burke, MEA-MFT, testified that last session the Legislature tried to find money to fund schools and did everything they could to move funding around to come up with some resources. The Legislature came up with the idea in SB 424 to take money away from schools through the retirement fund and give it back to schools through the general fund. SB 333 corrects the funding switch that resulted in a federal court decision adverse to the state of Montana. They believe SB 147 goes further in reversing the fund switch. That bill costs a bit more, but reverses the fund switch for all Montana schools, not just the impact aid schools. He urged support for the bill.

Bob Vogel, Montana School Board's Association, said they support SB 333, and they think it makes good sense to fund it.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. KEITH BALES asked **Ms. Quinlan** if half the retirement comes from property taxes in the district. **Ms. Quinlan** responded that, for any school employee who is paid from the general fund or other state sources and now any employee who gets paid from the federal impact aid fund, their retirement costs are funded from that countywide levy. For other employees in the district who are funded with federal education program monies, the retirement benefits are paid from the federal funding sources. **SEN. BALES** asked about the amount of mills required to fund retirement in the average school district and the amount of mills required in the areas that are getting impact aid. **Ms. Quinlan** said she would retrieve that information.

SEN. JOHN ESP asked **Ms. Anderson** if, before they passed SB 424, part of the \$375,000 was property tax from county taxpayers. **Ms. Anderson** said, that is correct. The county retirement fund is levied at the county level, and it is one levy for everybody in that county. Everyone in Glacier County assists in the payment of retirement costs for Browning Public Schools and Cutbank Schools. The GTB is the state's contribution. **SEN. ESP** asked how much the total retirement costs are in Glacier County for the

Browning School District. **Ms. Anderson** indicated it is probably a couple million dollars. There is a \$26 million budget in Browning, and the majority of school budgets are salaries. She described schools as "four walls and teachers".

Ms. Quinlan reported, in answer to the previous question of **SEN. BALES**, that an average mill levy for retirement costs for the elementary portion is between 20-25 mills. Yellowstone County is above 35 mills and the rest of the counties are below 20 mills. The average for high school is between 10-15 mills for the retirement costs associated with high school district employees. **SEN. BALES** said in areas where impact aid is paid, a lot of the property is not on the property tax rolls. He wondered if there was an added impact because of that. He wanted to see if there was a relation on the amount of mills that were levied. **Ms. Quinlan** confirmed that counties with a high proportion of federally impacted land tend to be more eligible for guaranteed tax base aid. Guaranteed tax base aid does not necessarily drive those mill levies higher; it just means there is more state support going to those counties. Glacier County is in the average range with 29 mills at the elementary level and 12 mills at the high school level. **SEN. BALES** said the guaranteed tax base payments make up for that and it is offset by the state, and **Ms. Quinlan** said, yes.

SEN. JON TESTER asked, since the ruling was retroactive to July 1, 2004, if the state of Montana is paying this out regardless of what they passed last session. **Ms. Quinlan** said that is now current law. There are districts that up until now were not charging those retirement costs to the retirement fund and were charging them to the federal funding source. They are directing schools to reverse those expenditures and move them over into the retirement fund. If schools go negative in their retirement fund as a result of that, the impact will be next year when they levy mills to replace those dollars. **SEN. TESTER** said the court document says, from July 1 of the beginning of this biennium, they are not required to take the retirement out of federal impact aid. It seemed to him there was another piece of legislation that required school districts to use federal monies that they received to pay federal salaries for federal retirement. **Ms. Quinlan** advised SB 323, carried by **SEN. DUANE GRIMES** in 2003, had provisions about how to charge retirement to those federal funds. The language in that bill got moved into SB 424 by the end of that session. **SEN. TESTER** inquired if this bill takes care of that problem totally. **Ms. Quinlan** indicated that this bill only addresses employee pay from the federal impact aid fund. For employees who are paid from Title I, Special Ed, or any of the other federal funding sources, the law still says that the retirement costs associated with those

employees would be paid from the federal funding source. SB 147, by **SEN. DON RYAN**, would allow all the retirement benefits for employees to be charged to the retirement whether they are paid from a state source or federal source.

Closing by Sponsor:

SEN. SMITH mentioned that the **Chairman of the Indian Impact Aid**, also supports the bill.

HEARING ON HB 452

{Tape: 1; Side: A; Approx. Time Counter: 21.7}

Opening Statement by Sponsor:

REP. JONATHAN WINDY BOY (D), HD 32, opened the hearing on **HB 452**, Implement recommendations for redesign of health programs for Indians. The bill was the result of the many meetings of the Medicaid Redesign Committee. In the current Medicaid system in Montana, \$18 million comes through the state to the Tribes through the Indian Health Service (IHS) and the different Tribal health facilities through a third-party reimbursement system. With the limited amount of dollars coming in from the federal government, most tribal policies state that the Indian health facilities will be the payer of last resort. They try to look for other resources like insurance, Medicaid or Medicare, or other third party reimbursement systems. The Department of Health and Human Services (DPHHS) will take the eligible tribal children out of the Children's Health Insurance Program (CHIP) and move them into the Medicaid program. The cost shift from CHIP to Medicaid will free up slots in CHIP.

Proponents' Testimony:

Garfield Little Light, Indian Health Service, advised he was a member of the redesign committee. The state of Montana spends a total of \$400 million on Medicaid. The Indian Health Service received \$23 million in the last fiscal year. The state spends about \$94 million on the Indian population in the state of Montana. HB 452 would increase the \$23 million and would not affect the amount of money that the state provides for Medicaid for the Indian population. The reimbursement comes 100% from the federal program and this will reduce the \$94 million that the state pays. In the redesign, they identified obstacles that the Indian population experienced accessing Medicaid.

{Tape: 1; Side: B}

The bill will allow information to come to the reservation. The bill will help the Indian population, the state, and meet the intent of the Medicaid program.

Renita Watson, Rocky Boy Health Center, testified once an eligible Native American patient is seen at a tribal, urban, or Native Health Service facility, the 100% status should follow the individual if they are referred to an off-reservation facility for specialized medical services. They strongly support the provision to leverage 100% Medicaid for health care services provided to Native American children in CHIP, which will open more slots in CHIP for non-Native children. She described the difficulties for a Native American to apply for Medicaid eligibility status. The bill will insure that more Native Americans within the state of Montana obtain proper health care and will help with adequate education and outreach.

Judy Edwards, Montana Consensus Council, advised they conducted the Medicaid Redesign effort. Prior to that, she was the Tribal Health Policy Liaison for the Governor of Utah and the Utah Department of Health. The bill represents the work of the task force of tribal members and the Indian Health Service, who diligently reviewed the suggestions of DPHHS. They also had the vision to step outside of those recommendations and look at the current system and how it could function more efficiently and effectively. In Sections 1, 2, and 4, the bill speaks directly to the issue of federal responsibility to provide health care to eligible Native Americans. In Section 1, tribal and Indian health service facilities are protected from cost shifting, and the state is reimbursed 100%. There are no savings to the state when it reduces services to eligible American Indians; it only reduces the total amount of money available to citizens of Montana, and shifts costs to an already poorly funded health system. IHS cannot assume the burden of the reduction in state plans. Tribes can conduct long-term planning when the level of services remains constant. **Ms. Edwards** elaborated on the remaining sections of the bill.

Loni Whitford, Indian Health Service, thanked the committee for the opportunity to voice her support for HB 452. Her concern is not only for Native Americans, but also non-Native Americans in the state of Montana. It is important that their patients are able to receive their medications with ease. It is important for the Department to consult with the Tribes on any policy changes, appropriate sources of information and health care needs for Native Americans, technical assistance, consulting on centralized billing procedures, and health care business and infrastructure. It is important that the Tribes are able to obtain the same information and data used to monitor Medicaid services,

eligibility status, and promote or modify changes in Medicaid policy. She added the importance of equality is vital; there is no uniformity in health care in federal prisons. She thanked the committee for their time and for the opportunity to testify on behalf of the Chippewa Cree Tribe in support of HB 452.

Opponents' Testimony: None.

Informational Testimony:

Hank Hudson, DPHHS, stated he was available for questions.

Questions from Committee Members and Responses:

SEN. GREG BARKUS, inquired why this bill is not a resolution; there is no directive. **REP. WINDY BOY** replied that many times resolutions don't carry weight. He wanted to make sure that the Department will work with the Tribes.

SEN. RICK LAIBLE asked **Mr. Hudson** how this will work. **Mr. Hudson** advised this bill grew out of the Medicaid Redesign process. It became clear, through the work of the Native American Subcommittee, that it was in everyone's best interests to maximize the number of Native American individuals who have access to Medicaid; the costs are 100% reimbursable by the federal government. It would encourage people to access health care and help with the financial condition of the Indian Health Service and Tribal Health Services. As the process went along, they identified reasons why people were not on Medicaid. Some of those reasons were inadequacies in the Department's system. The bill states that as Medicaid Redesign moves along, they should strive not to limit services to people on reservations because there is no savings to the state, and it hurts the Indian Health Services on reservations. There were many incomplete applications due to the difficulty of the process. The bill makes sure the Department will do everything it can to maximize Medicaid participation for Native Americans.

SEN. LAIBLE asked how the Indian Health Services and tribal facilities are funded. **Mr. Little Light** advised the Indian Health Services are a federally funded program. The law allows Tribes to contract with the Indian Health Service to manage and operate their own programs on the reservations; two of those are the Rocky Boy Tribe and the Flathead Tribe. The Tribes supplement those programs with Medicare, Medicaid, and private insurance.

SEN. DAN WEINBERG wondered how the Department will rectify the problems with the incomplete applications. **Mr. Hudson** advised

they will ask the Tribes for the best remedy to these problems. Location makes a difference. Other solutions include empowering people to assist elderly people, finding ways to use the telephone, and reviewing policies regarding resources and assets that are unique to tribal members. The general attitude needs to be respectful.

VICE-CHAIRWOMAN TRUDY SCHMIDT asked **Ms. Edwards** why this was not a resolution. **Ms. Edwards** advised they originally looked at language that was considerably stronger, but they chose a manner of cooperation.

Closing by Sponsor:

SEN. WINDY BOY emphasized this will be a win/win situation. He noted that **SEN. JOHN COBB** offered to carry the bill.

HEARING ON SB 207

{Tape: 1; Side: B; Approx. Time Counter: 23.4}

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, Manhattan, opened the hearing on **SB 207**, Electronic monitoring of sexual offenders. **SEN. PERRY** advised this bill was heard on the floor and targets Level 3 sex offenders. Level 3 is when the risk of repeat sexual offense is high, there is a threat to public safety, and the evaluator believes the offender is a sexually violent predator. Electronic monitoring of these offenders would provide communities with a higher level of security and safety. The bill was amended in the Senate Judiciary Committee to apply to only Level 3 offenders, which changed the fiscal note. This is not a retroactive bill and does not apply to offenders who have already been released. There will be no fiscal impact for the next two years.

{Tape: 2; Side: A}

Proponents' Testimony:

Mike Ferriter, Department of Corrections, stated one of the components of the Community Corrections Division is the Probation and Parole Bureau, where they supervise 7,300 offenders. They have five probation and parole officers who are strictly focused on dealing with sex offenders. Their electronic monitoring system is not as advanced as the system which other states use. Their intensive supervision program is an eighteen to one ratio. They feel this GPS system would enhance their capabilities, but

is not a substitute for good case management and sex offender treatment. There have been amendments to the fiscal note; the fiscal impact is minimal initially but will grow as more offenders get released. Victims of sex offenders, their families, and the public would probably think this was money well spent.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JON TESTER asked if there are any other states that do this. **Mr. Ferriter** said the technology is used by some states for sex offenders and other high risk offenders.

SEN. WEINBERG asked what population would be affected. **Mr. Ferriter** said this would affect the highest level of offenders that would be the most likely to re-offend. **SEN. WEINBERG** asked to what degree these offenders would be monitored. **Mr. Ferriter** said the current system is a curfew monitoring system. The GPS system would actually track offenders. **SEN. WEINBERG** asked if this would be more helpful after the fact if the person re-offends. **Mr. Ferriter** replied it would help law enforcement, and accountability is a factor.

SEN. TESTER asked how often there would be assessments. **Mr. Ferriter** replied the assessment at Montana State Prison happens during intake and prior to release. Sex Offender Treatment greatly reduces their chances of re-offending. That is where the tier designation comes from. **SEN. TESTER** asked if they are still in a rehabilitation situation once they are out. **Mr. Ferriter** advised it could almost be guaranteed that the Parole Board or the court would require ongoing sex offender treatment. **SEN. TESTER** asked if he anticipates how long the satellite monitoring would continue. **Mr. Ferriter** answered, in the current bill, it would be during the period of supervision.

SEN. DON RYAN asked if the designation level is based on the ability to re-offend. **Mr. Ferriter** confirmed, that is correct. **SEN. RYAN** asked if people that will have committed offenses that are adjudicated after July of 2005 will be subject to this and not people that are currently in the system. That is why the fiscal note has no impact. **SEN. PERRY** said, that is correct. **SEN. RYAN** said that eliminates the short term problem, builds something into the future, and avoids the legal issues. **SEN. PERRY** agreed.

SEN. LAIBLE observed with the new fiscal note, they will have to eliminate Section 8, which deals with HB 2.

VICE-CHAIRWOMAN SCHMIDT wondered about the long term impact and when it levels out. **Mr. Ferriter** said these things are hard to predict; eventually some people will come off supervision. There is also a collection from the offender that will offset some of the cost. The number of offenders will probably be relatively consistent. **VICE-CHAIRWOMAN SCHMIDT** asked if sexual offenses are increasing. **Mr. Ferriter** advised the offender population is growing, but Level 3 sexual offenders are not growing at a greater rate than anything else. There are currently 18 Level 3 sexual offenders out of 7,300 offenders that are under supervision.

Closing by Sponsor:

SEN. PERRY advised when he brought this concept to **Director Bill Slaughter, Department of Corrections**, the technology was not available. In early spring of 2004, Tennessee became the first state in the union to adopt a pilot program using this technology. Since then, there have been four or five other states. Research indicates this level of sexual offender likely has a lifetime, virtually incurable, condition. His original intent was to monitor these individuals for life. They found they could not go beyond the sentence a judge imposes. An ankle bracelet would be worn and movements would be transmitted to satellite, directed back to a receiving station on earth, and recorded on a hard drive. The location of the person could be pinpointed twenty-four hours a day, seven days a week. If an offense occurs, this can shortcut the investigation process. There can be alarms placed at schools, playgrounds, and daycare centers. If the person wearing this device comes within a certain distance of that alarm, the alarm will go off. This is a serious deterrent. A victim could have an alarm in their home if the perpetrator was released from jail. He described a phone call he got from a young mother that explained why he brought the bill forward.

HEARING ON SB 376

{Tape: 2; Side: A; Approx. Time Counter: 23.2}

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, Bozeman, opened the hearing on **SB 376**, Require environmental impact statement on certain stretch of Gallatin River. The bill asks for the funding for an

environmental impact statement (EIS) in support of a petition that was filed and accepted by the Department of Environmental Quality (DEQ) to classify the Gallatin River from the point where it exits Yellowstone National Park to where it merges with Spanish Creek, which is just before Gallatin Canyon opens up into the Gallatin Valley. The bill asks for \$250,000 and requires that the EIS be done. Once the environmental impact statement is completed, the Board can go forward, complete the classification process, and decide whether to classify that section of the Gallatin as an outstanding resource water or not.

Proponents' Testimony:

Amy Stix, American Wildlands, said they are a 28-year-old conservation organization based in Bozeman. Their members, along with 80 local businesses, signed a petition in support of outstanding resource water designation for the Gallatin River. In 1995, the Montana Legislature gave the citizens of Montana the ability to petition state government to provide special waters with special protections. The designation assures that future pollution discharge permitting does not permanently pollute the river's high quality waters. This does not stop development, but requires responsible management. The Gallatin represents the first and only time in ten years that Montana citizens have proposed a river for ORW designation. The water in question is revered for its recreation, economic, and aesthetic values. It is free-flowing, has no diversions, has a high water quality standard, and is one of the top blue-ribbon trout streams in the country. Many rivers in Montana have already been judged by DEQ as having substandard water quality. What could have been a one or two year process to decide this designation ground to a halt. In December of 2001, American Wildlands filed the petition to seek ORW protection for the Gallatin. The Board, appointed by Governor Judy Martz, accepted the petition based on its merits and on March 29, 2002, directed the DEQ to conduct the EIS. This EIS would look at the consequences of ORW designation on the environment, local economies, and society. Both the Bozeman City Commission and the Gallatin County Commission supported this process. Once the environmental review is completed, the Board makes its final recommendation to the Legislature regarding the merits of ORW.

{Tape: 2; Side: B}

This month marks the third year that the analysis has not begun. American Wildlands requests that the EIS be funded and that the Legislature directs DEQ to complete its analysis within the next two years. The issue is not to debate ORW designation. The decision to be made is whether the public will finally be able to ask questions, provide suggestions, and support or oppose the

proposal in a public venue. In their opinion, the most important reason to fund the EIS is to provide every citizen the ability to weigh in on this issue.

John Wilson, Montana Trout Unlimited, represents 3100 conservation-minded anglers from across the state. In the last session, the Legislature amended the statute that deals with outstanding resource waters to require an EIS, paid for by the petitioner. The petition that was requested for the Gallatin was prior to the passage of that legislation last session. There was an attempt to include the Gallatin in the legislation, but the Legislature said that was not the right thing to do because the petition was filed before the law was passed. The Legislature made clear that it is the state's responsibility under the previous statute to complete the EIS. The request for funding is to take care of the state's responsibility.

Derek Goldman, Montana Audubon Society, said he also represents the **Montana Chapter of the American Fisheries Society**. This is a wildlife rich area and there is at least one peregrine falcon nest. Fish, Wildlife, and Parks (FWP) biologists have determined there are west slope cutthroat trout populations here that are 98% genetically pure. Montana's wildlife lovers have been waiting three years for this process to move forward. He urged a Do Pass.

Joe Gutkoski, Montana River Action, stated they are a statewide river watch organization. The EIS is needed as soon as possible. In 2002 the Yellowstone Club was fined \$86,875 for stream pollution, killing of trout, obliteration of streams, building earth dams across the stream, breaking down stream banks, operating heavy earth-moving machinery in stream beds, destroying wetlands, and altering stream beds. The fines were levied by FWP, DEQ, and the Environmental Protection Agency (EPA). In 2003, the Yellowstone Club was fined \$231,000 for violating the U.S. Clean Water Act, discharging sediment into state waters, failure to comply with DEQ's permit requirements, and for construction activities. In 2004, they were fined \$1.8 million by the EPA for violating federal laws, dumping fill material into federally protected wetlands, causing serious erosion, etc. In 2003, the Simpkins Family Corporation, and Jim Taylor, developers in the Big Sky area, were fined \$45,400 for pushing rock, topsoil, and sub-soil over the steep banks into the stream, displacing stream bedrock, and causing future erosion. In 2003, Moonlight Basin Subdivision Resort in the Big Sky Area was fined \$39,500 for violations of the federal Wetlands Protection Act. This river is being threatened by development at a fast pace. The EIS is needed to get this river classified as an ORW.

Opponents' Testimony:

Michael Kakuk, Attorney, Montana Association of Realtors, advised they have taken no position on the question of ORW designation. The Association believes the funding mechanism is inappropriate. Currently, if an ORW is applied for, the cost of the study has to be paid by the petitioner. HB 437 was brought forward and passed, in 2003, after the Gallatin ORW petition had been accepted. They were not grand-fathered by statute but by implication. The association feels the petitioners should have to pay for the EIS.

Don Allen, Western Environmental Trade Association, advised they have been involved in this issue since it was first proposed. They had concerns about designating one area over others. They have no problem with the EIS, but they have a concern about how it is paid for. The Resource Indemnity Trust (RIT) money came from the resource industries and was designated to take care of claims that were not cleaned up. There are a lot of uses made of the RIT money, and it continues to be drained for purposes other than what it was set aside for; this is another attempt to do that. They have always felt that the applicants should pay for the EIS. He suggested each member of the organizations who testified put money forward to do this. He acknowledged that the Gallatin is a great river and maintained there are water quality standards to protect that river, currently.

Byron Roberts, Montana Building Association, emphasized they do not object to the EIS, but they object to using state revenue to fund a study which should be funded by **American Wildlands** and others who signed the petition. They urged that the committee reject the funding mechanism contained in SB 376.

Informational Testimony:

Tom Livers, DEQ, advised that in March 2002, the Board of Environmental Review voted to accept the petition contingent on the Department conducting the EIS. They did not have the estimated \$250,000 in their budget to make that analysis. They requested that amount of general fund in the 2003 session, and that was not approved by the Legislature. They submitted the request again for this session, and that was not approved by the budget office. The fiscal note has not been updated to address the amended version of the bill. The appropriations subcommittee moved Decision Package 15-1012, a restricted one-time only appropriation, that would have used RIT funds for this purpose. That would have been the amount of trust in excess of the \$100 million cap that can be appropriated each session. There were adequate funds at the time to cover this appropriation. Because

more than one subcommittee makes appropriations against those RIT funds, that amount was over-appropriated. Subsequently, the entire \$250,000 was not available. The subcommittee asked the Department if they could identify another source of funding to make that appropriation whole. They found one state special revenue account in their budget they felt could absorb that, and that was the junk vehicle account. Clearly, this is outside the statutory purpose of that account, and would require legislation to make that transfer of funds for that purpose. The Department is drafting a bill, with the support of the budget office, that would accomplish that. Unless general fund is appropriated for this purpose, that is the only funding source they can identify.

Questions from Committee Members and Responses:

SEN. STEVE GALLUS inquired about the testimony regarding significant fines in the last number of years in that specific area of the state. He wondered where those fines go. **Mr. Livers** replied most of that goes to the federal government; the state share of the fines go into the general fund. EPA allows supplemental environmental projects and works with violators to take a portion of the fine and use it for those purposes. The Department looked at the possibility of trying to use the supplemental environmental project concept to help fund this analysis, but they do not have the authority required to use those funds and have to negotiate with the violator; the violator was not interested in applying funds for that purpose. **SEN. GALLUS** asked **SEN. WHEAT** if he was aware of the significant amount of fines that were testified to earlier, and if an attempt was ever made to go after those dollars. **SEN. WHEAT** indicated he was aware of some fines but did not make a concerted effort to go after them. Some of those fines have been put into other supplemental projects. **SEN. GALLUS** commented that this has happened in Butte. He tried to get those dollars because he thinks they should go to the area where the damage is done.

SEN. ESP advised they adjusted the junk vehicle fee in the last session and asked **Mr. Livers** if he had any recollection of that. **Mr. Livers** recalled the adjustment raised the amount that the Department could pass through to the counties. He did not think the fees were raised in the last session. **SEN. ESP** said there is a greater need to use that fund at the county level, so they changed the allocation.

SEN. ESP asked **SEN. WHEAT** why he thinks this should be a priority. **SEN. WHEAT** responded this petition was filed four years ago, and they have been waiting for three years. Every year, the Department has asked for an appropriation to complete the EIS and it has not been done. If the public is going to pay

for an EIS to support a foreign corporation to find out if they can burn tires in their plant, they ought to take care of their own resources in the state. This stretch of the Gallatin River is a wonderful stretch of water. This water flows out of the park, and it is an area that is under development. They ought to take a look at what they can do to protect that water. **SEN. ESP** said he and **SEN. WEINBERG** are on a subcommittee that is looking at the mental health crisis. It has been in statute for 17 years that the state should fund mental health and there has never been the money in 17 years to do it; that should be a priority. He asked if the study is done and the river is designated, if that would force the federal government to adopt a different environmental practices within the Park. In the Yellowstone drainage, they are dumping raw sewage directly in the drainage in some cases. **SEN. WHEAT** thought if the Yellowstone was an ORW, they could file a lawsuit against the Park Service. An ORW classification gives protection to the water. He told **SEN. ESP** if he brings a bill to provide the funding for mental health, he will support it; he agreed that is a priority. **SEN. ESP** said there are a lot of priorities that have been hanging fire for years, and they have to deal with what are the most important overriding issues in this committee.

{Tape: 3; Side: A}

SEN. RICK LAIBLE asked how many other rivers have applied. **Mr. Livers** believed this is the only petition for that designation. **SEN. LAIBLE** asked if waters within wilderness areas are considered ORW's without an EIS. **Mr. Livers** replied those rivers within wilderness boundaries are considered ORW's by definition. The impact statement is not on the water itself, but on the proposal. The scope of the EIS will look at social and economic impacts on the surrounding drainage area of the Gallatin River. **SEN. LAIBLE** asked about the intended purpose of the funds in the RIT trust. **Mr. Livers** advised this does not fall within one of the RIT special accounts. What was proposed to use here was at the front end of the trust. Once the trust reached the \$100 million cap level, anything that accrues in that account above that level may be appropriated for any general purposes relative or related to the RIT; he read the definition. **SEN. LAIBLE** asked about the purpose of the fund and where the fees come from. **Mr. Livers** stated the RIT and all related accounts have multiple functions, most of them with some resource orientation. The sources of funding include resource groundwater assessment taxes and taxes on resource industries; there is a wide degree of interpretation as to the various purposes of the RIT and all its related accounts. One intent was to contribute to the state share of various natural resource remediation projects. Another purpose is to help mitigate resource development impacts in

specific impacted areas. **SEN. LAIBLE** said this bill is a shift in policy. There has been no petition that has gone forward to designate another outstanding resource water. If there is a policy decision that the state will pay for an EIS for any petition to designate an outstanding resource water, he wondered what the financial impacts will be on the continuation of the RIT. **Mr. Livers** said this would not change the current law regarding who pays for an EIS. In the last legislative session, the law changed so those submitting petitions pay the cost of the EIS. One action that was taken when that law was passed was the Gallatin was grand-fathered in. The Gallatin is the only one that continues to be grand-fathered whether this bill passes or not.

SEN. BOB HAWKS said he is on the Natural Resource Subcommittee. There were three sources of funding that were put together to fund the study. One of those sources, which has not been mentioned, were two unused grants that were returned to the Department--each for \$50,000. That \$100,000 was to be included and combined with RIT funds and some small change in junk vehicle. The junk vehicle provisions have to do with water quality. He asked **Mr. Livers** to clarify. **Mr. Livers** said he was not present during those discussions. His understanding was the junk vehicle fee was the only other source they were able to identify. The junk vehicle fees provide for collecting and disposing of junk vehicles in an environmentally sound manner. Historically, junk vehicles ended up on river banks.

Gary Hamel, DEQ, did not recall another funding source being identified in the form of grants. **SEN. HAWKS** asked him to search the minutes of that meeting and clarify that for the committee before executive session. **Mr. Hamel** said he would get that accomplished.

SEN. HAWKS asked **Richard Oppen, Director, DEQ**, about the use of fines. His understanding was that is a negotiated process between the Department and the person being fined. The final decision is made by the person paying the fine. **Mr. Oppen** believed what is negotiated is whether the fine is in the form of cash or some kind of project that provides some environmental benefit usually where the violation occurred. The violating company has no say on how the fine is used. **Mr. Livers** advised the cash penalty is statutorily required to be deposited into the general fund. In some cases, a portion of that may be offset by those public benefit projects that **Mr. Oppen** referred to. They are called supplemental environmental projects. There has to be a significant punitive component. The Department does not have the authority to direct that. **SEN. HAWKS** said language has been included in legislation this session to free DEQ to follow the

guidelines of the EPA in making the project orientation more directed toward those communities. He asked **Mr. Livers** if he is familiar with that change. **Mr. Livers** said he is not, but it sounds like that would help give them authority to direct where those public benefits projects could go.

SEN. RYAN asked about the fiscal note and the appropriateness of using state funds to do the EIS to determine ORW designation. If there is building going on and violations taking place, he wondered if there is less of a probability that this water will be able to get ORW status. **Ms. Stix** advised that is a consideration. A bill in the House, introduced by **REP. CHRIS HARRIS**, will put a temporary hold on discharge permits going into the Gallatin until this issue is resolved. Developers have to go through a permit process to put any kind of direct affluent into the Gallatin River. Until the study is done, and until they have the designation, the river is possibly at stake.

SEN. RYAN asked **Mr. Roberts** if they have a moratorium on building in the drainage of the Gallatin until the EIS is done, if it would be appropriate for the state to pay for that so development can be continued in that area. **Mr. Roberts** said he still would not think it is appropriate to pay for something someone else petitions. **SEN. RYAN** inquired, if there is a moratorium on building in the area until an EIS is done, if **Mr. Robert's** Association would be willing to pay so they could continue building, or if he thinks the state should pay so the development can continue. **Mr. Roberts** still would feel there is no reason for the state of Montana to use valuable revenues to pay for something that someone else petition.

SEN. LAIBLE asked **Mr. Livers** about the testimony that, the longer the wait, the more the river will be degraded. The EIS does not review the quality of the river. **Mr. Livers** replied the ultimate determination of the designation of the ORW will come from the Board of Environmental Review. The Legislature will make the final determination on ORW status. **SEN. LAIBLE** said it is not time sensitive as far as the EIS is concerned. **Mr. Livers** confirmed the EIS is not time sensitive; the other things the Board might take into account could be time sensitive.

SEN. BARKUS asked how this began. **Ms. Stix** replied the citizen effort to propose the Gallatin River as an ORW began in 2000. **American Wetlands** began research in 2001 and filed the petition. On March 29, 2002, the Board of Environmental Review approved their petition based on its merits. Once the Board approves a petition, the EIS should be implemented. In the 2003 session the Legislature changed the ORW laws. In the past any citizen of Montana could come forward with a petition for a stream, river,

or lake for ORW status and the state would pay for the EIS. She added the reason the state was to pay for the EIS was these are public resources and preserving these rivers and streams as ORW's is a benefit to all Montanans. **SEN. BARKUS** asked how many other petitions have ever been filed. **Ms. Stix** said this is the only time in ten years, since this law was put on the books, that this has ever been attempted. **SEN. BARKUS** said at the time the law was put on the books, the state would pay for any EIS that any petitioner brought forth. **Ms. Stix** said that was how the statute was laid out. When the 1995 Legislature passed the law that gave the ability for citizens to bring forth ORW proposals, there was never any mention that petitioners would pay. That whole component was added in 2003. **SEN. BARKUS** asked, if this funding is not approved, if her group will wait until the 2007 to get the EIS paid for. **Ms. Stix** replied they will try in two years. There were some lawsuit settlements over water quality degradation in the upper Gallatin River. She and her organization fought hard to get some of that settlement money for this EIS because there seemed to be an appropriate correlation. That money was spent on a glass crusher.

SEN. KEN HANSEN asked **Mr. Wilson** about the importance of the time factor. **Mr. Wilson** thought what is going on is very time sensitive. The river may or may not qualify. The process was set up under the Clean Water Act and implemented by law by the state of Montana. He disagreed with **Mr. Roberts**; this is a citizen process, similar to the initiative process, where the citizens of the state can petition the Board of Environmental Review to designate ORW's. The general fund of the state of Montana is the citizen's money and is an appropriate place to pay for the EIS. The petition was filed almost four years ago, and the state has failed to act. They tried to make the petitioners pay in the last legislature, but that was amended out of the bill so the bill would pass. If the Legislature does not fund this, the petitioners, as citizens of the state of Montana, would have no other recourse but to put an injunction against any future development in the Gallatin until the state actually funds it and gets the work done.

{Tape: 3; Side: B}

Closing by Sponsor:

SEN. WHEAT said they changed the law but, at the time the petition was filed, it was the state's responsibility to pay. He thought, in fairness, that the state ought to pay. The EIS would establish a baseline for water quality in the Gallatin River. It will not stop development or anything up the canyon. It will make sure that the water quality will not be degraded.

ADJOURNMENT

Adjournment: 10:50 A.M.

SEN. MIKE COONEY, Chairman

PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT ([fcs54aad0.TIF](#))